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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,781	02/13/2001	Evan Sundquist		7871

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J.M. ROBERTSON INTELLECTUAL PROPERTY, LLC
233 SOUTH PINE STREET - FIRST FLOOR
SPARTANBURG, SC 29302

EXAMINER

NORDMEYER, PATRICIA L

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 03/19/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

ASB

Office Action Summary	Application No. 09/762,781	Applicant(s) SUNDQUIST, EVAN	
	Examiner Patricia L. Nordmeyer	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 27-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 112 rejection of claim 2 of record in Paper #9, Page 2, Paragraph #3 has been withdrawn due to Applicant's arguments in Paper #11.
2. The 35 U.S.C. 102 rejection of claims 1 – 4 of record in Paper #9, Page 3, Paragraph #5 has been withdrawn due to Applicant's amendments in Paper #11.
3. The 35 U.S.C. 103 rejection of claims 1 – 4 of record in Paper #9, Pages 3 – 4, Paragraph #7 has been withdrawn due to Applicant's amendments in Paper #11.

Response to Amendment

4. The declaration under 37 CFR 1.132 filed January 24, 2003 is insufficient to overcome the rejection of claims 1, 2, 4 and 27 – 29 based upon Jones and Morin et al. as set forth in the last Office action because: there is no clear evidence of unexpected results due to the shape of the wiper.

New Rejections

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones, Sr. (USPN 3,784,998).

Jones, Sr. discloses a wiper made from sheet material (Column 2, lines 15 – 16 and Figure 2, #18) having six contiguous edges of equal length (Figure 1) that define the edges of the two opposing faces with interior portions (Figure 2, #12 and the bottom of the stack, #18). The sheet material is either woven or non-woven and made with cotton or synthetic fibers (Column 2, lines 29 – 32).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin et al. (USPN 6,189,189).

Morin et al. discloses a wiper (Column 1, lines 5 – 7) made from knitted or woven fibers of polyester or poly(ethylene terephthalate), synthetic filaments, and from yarn (Column 2, lines 54 – 57). The wiper may be cut into any geometric shape (Column 3, lines 55 – 56), and

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therefore, it would be obvious to one of ordinary skill in the art to form a hexagonal shape having six contiguous sides of equal length. The wiper inherently has interior portions defined by two opposing faces, or surfaces when it is formed since it is formed by a single layer of material (Column 7, lines 41 – 42).

It is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) Also, see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape which would have been unforeseen to one of ordinary skill in the art. Furthermore, Morin et al. clearly teaches that the wiper may be cut into any geometric shape as discussed earlier. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the wiper to have six edges. One skilled in the art would have been motivated to do so in order to have any geometrical shape that appealed to the user.

Response to Arguments

9. Applicant's arguments with respect to claims 1 - 4 have been considered but are moot in view of the new ground(s) of rejection. However, since the same references are being applied to the new amended claims, the arguments will be responded to below.

In response to Applicant's argument that Jones discloses a relatively thick pad of

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segmented construction as opposed to a wiper of cloth material, Jones discloses the article as claimed in claim 1. The open language of the claim, i.e. "comprised", allows more than one layer to be present in wiper and the segmented construction. Figure 1 of Jones discloses the six contiguous perimeter edges as claimed even though the edges contain the petal formation not desired by the applicant.

In response to Applicant's argument that Jones does not incorporate claimed elements of a hexagonal material having an interior portion defining two opposing faces and six contiguous perimeter edges disposed in surround relation to said interior portion such that the six contiguous perimeter edges cooperatively define an edge boundary around the interior as claimed, Jones does disclose a hexagonal material with an interior portion and opposing faces (Figure 1), where the interior portion is defined by the contiguous edges. According to the dictionary, contiguous is defined as "being in actual contact: touching along a boundary or at a point" or "next or near in time or sequence". As may be seen in Figure 1, the petals of the article are in contact with each other.

In response to applicant's argument that Jones does not appear to establish by itself a case of anticipation for a wiper cloth of any kind, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

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See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to Applicant's argument that Morin et al. fails to teach the hexagonal shape and the respective advantages gained by the shape, Morin et al. clearly states that any geometric shape may be used for the wipes (Column 3, lines 55 – 56). One of ordinary skill in the art would have recognized the gained advantages by the hexagonal shape, shorter perimeter edges while having a greater interior surface area, since one of ordinary skill could use known general geometry formulas to compare the surface areas to the edge perimeter. Therefore, one of ordinary skill in the art could readily determine the optimum shape to have a greater surface area with less perimeter edges.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer
Examiner
Art Unit 1772

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pln

March 13, 2003

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/17/03